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March 23, 2004      LB 788, 1157, 1207

CLERK:      Judiciary offers committee amendments, Mr. President.  
(AM2906, Legislative Journal page 1029.)

SENATOR VRTISKA:    Senator Brashear.

SENATOR BRASHEAR:    Thank you, Mr. President, members of the body. The committee amendments to LB 1207 incorporate five other civil procedure bills within LB 1207. Section 4 of the bill is LB 1157, introduced by Senator Landis. Nebraska statutes currently exempt public assistance to the aged, blind, disabled, aid to dependent children, and medical assistance for the aged from execution in bankruptcy and money judgment collections. However, the statutes do not specifically exempt the federal or state earned income tax credit refunds from bankruptcy proceedings. The EITC, or earned income tax credit, is a tax benefit available to low and moderate income persons who worked at some point during the prior tax year. In 2003, the United States Bankruptcy Court for the District of Nebraska held that the earned income tax credit refund cannot be exempted under Nebraska statute as currently written. LB 1157 provides a specific exemption for the full amount of any federal or state earned income tax credit refund from garnishment, attachment, and all other creditor claims. Section 5 of the bill is LB 788, introduced by Senator Quandahl. Under current law, in order to collect a debt, a judgment creditor issues an execution against the property of the judgment debtor. An execution upon a money judgment is the process of enforcing the judgment usually by seizing and selling nonexempt property of the debtor in order to satisfy the debt. That execution is issued to the sheriff of the county where the debtor resides or, if the debtor does not reside in the state, to the sheriff of the county where the judgment was rendered. Oftentimes, the property will be exempt, leaving the sheriff with little opportunity to satisfy the judgment. If the sheriff returns the writ of execution and the debt is not paid in whole or in part, the creditor may request the court to compel the debtor to appear before the court that issued the writ of execution in order to answer questions concerning his or her property. LB 788 provides that at any time after the entry of a judgment against a debtor the creditor is entitled to an order from the court compelling the debtor to appear before the court to answer questions concerning his or